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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,360	03/01/2002	John H. Dagel	P05538US0	2722
22885	7590	10/15/2003	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			BATSON, VICTOR D	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/086,360

Applicant(s)

DAGEL ET AL.

Examiner

Victor Batson

Art Unit

3671

-- Th MAILING DATE of this communication appears on th cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,9-11,14,17-19,22,23 and 25 is/are rejected.
- 7) ☒ Claim(s) 3-6,8,13,20,21 and 24-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 September 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

Claims 1,9,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boxrud (3,331,249) in view of Boxrud (3,264,877).

Boxrud '249 discloses a soil probe including a frame, a wheel having a soil probe 30, and a hydraulic cylinder 37 with the frame pivotally connected such that the wheel is movable between a longitudinally extended use position (fig 1) and a laterally folded transport position (fig 4). Boxrud '249 however lacks a plurality of soil probes with each soil probe having an outer end for receiving and discharging the soil sample.

Boxrud '877 teaches that it is known in the art for soil sampling device to use multiple soil probes 31, having an outer end for receiving soil samples. The use of multiple probes allows more samples to be taken.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Boxrud '249 by using multiple soil probes as taught by Boxrud '877, to allow more samples to be taken.

Additionally, the examiner notes that it has been held that mere duplication of the essential working parts of a device involves only routing skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 2,7,14,17,18,19,22,23,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boxrud (3,331,249) in view of Boxrud (3,264,877) as applied to claims 1,9,11 above, and further in view of Little (3,739,857).

Boxrud '249 as modified by Boxrud '877 discloses a soil probe as described previously, but lacks the use of plunger assemblies.

Little teaches that it is known in the art to use biased plunger assemblies (fig 2) to help expel the gathered soil samples. Additionally, the use of plungers reduces the clogging of the probes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Boxrud '249 by using biased plunger assemblies as taught by Little, to help expel the soil samples and reduce clogging of the probes.

Concerning the claims 22 & 23, the combination renders the claimed method steps obvious since such would be a logical manner of using the combination. Concerning claims 7 & 18; the examiner takes Official Notice that it is notoriously old and well known to use a pin to retain 2 movable members in a stationary position. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the device of Boxrud '249 as modified by Boxrud '877, by using a pin to hold the apparatus in the transport position to further secure the probe in the transport position, thereby enhancing the overall safety of the apparatus.

Allowable Subject Matter

Claims 3-6,8,10,13,15,16,20,21,24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Arguments

Applicant's arguments, with respect to the combination of Boxrud '249 and Boxrud '877 have been fully considered but are not persuasive. Applicant argues that the soil probes do not have an outer end for receiving and discharging the soil sample. The examiner notes that the limitation "for receiving and discharging the soil sample" is an intended use recitation. Since the soil probes of Boxrud '249 and Boxrud '877 have outer ends comprising a bore the can receive a soil sample, these outer ends are **capable** of discharging a soil sample as well.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior

art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

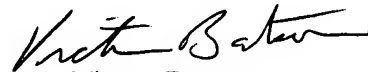
In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge generally available to one of ordinary skill in the art was used. Additionally, although the device of Boxrud '249 lacks a device to catch a sample discharged from the outer end of the probe, the currently cited prior art discloses devices specifically made to pick up soil samples off the ground.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax

phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1115.



Victor Batson
Primary Examiner
Art Unit 3671